



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 653

J. D. COLLINS,

vs.

**W. R. WAYLAND, FRED G. HOLMES,
WEBB, and THE CONSOLIDATED
and THE CITY OF PHOENIX.**

**BRIEF OF RESPONDENTS IN OPPOSITION
PETITION FOR WRIT OF CERTIORARI**

HESS SEAMAN

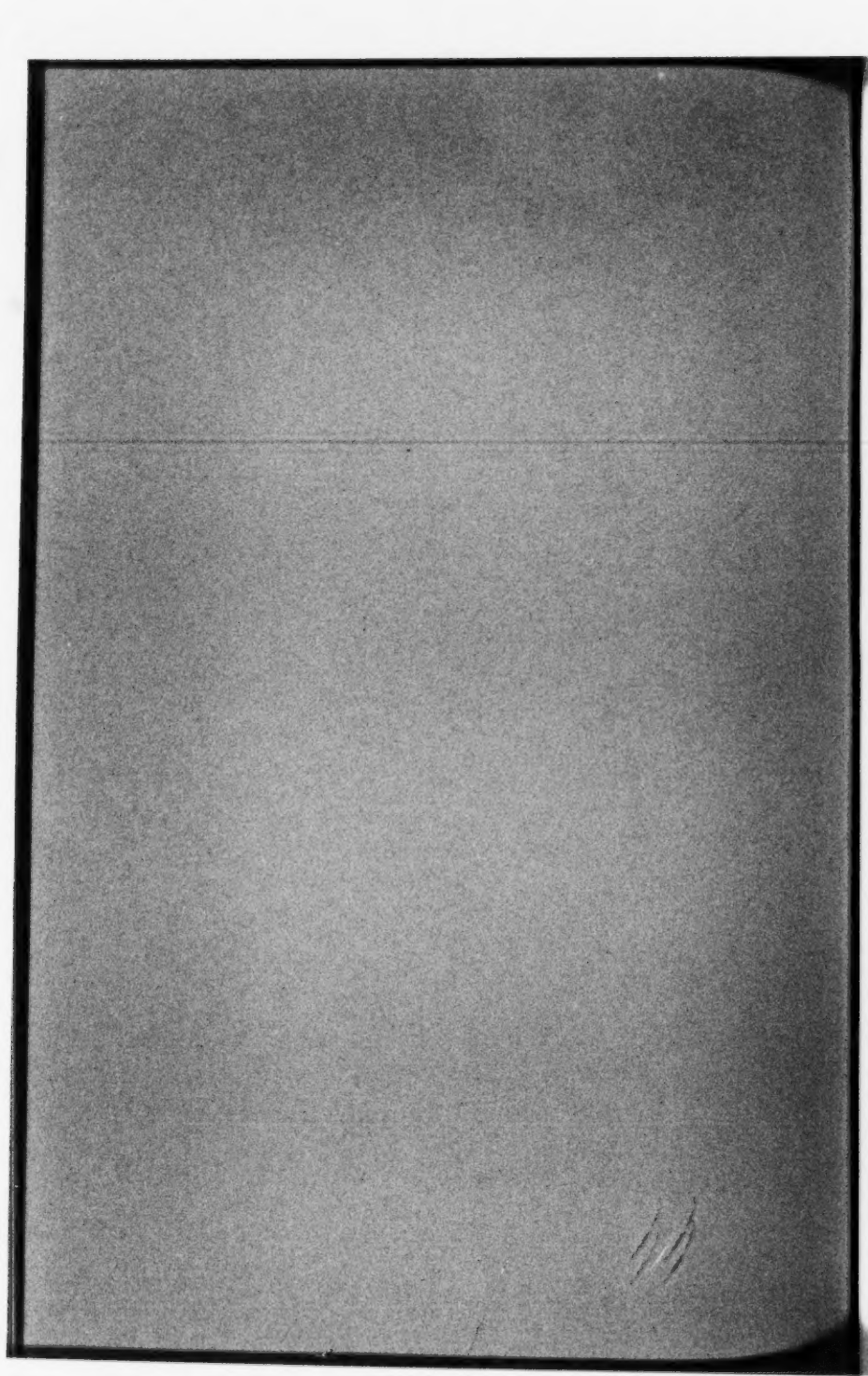
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 653

J. D. COLLINS,

Petitioner,

vs.

W. R. WAYLAND, FRED G. HOLMES, DEL E.
WEBB, and THE CONSOLIDATED MOTORS;
and THE CITY OF PHOENIX,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Supreme Court of the State of Arizona, filed July 15, 1942, is reported in 127 Pac. 2d 716 and appears at page 183 of the record herein. Rehearing was denied September 16, 1942 (Tr. 185).

Statement of the Case

The petitioner, J. D. Collins, brought action in May, 1938, in the Superior Court of Maricopa County, Arizona, to restrain the respondents, W. R. Wayland, Fred G. Holmes and Del E. Webb, from doing certain acts in connection with the property in question. The respond-

ents filed their answer and a cross-complaint, and thereafter, with leave of court, a second amended cross-complaint. The City of Phoenix and C. Claude Dye, by proper proceedings in intervention, became parties plaintiff to the second amended cross-complaint. By proper proceedings the petitioners Hattie L. Mosher and Julia C. Collins were, on order of Court, made parties defendant to the second amended cross-complaint. Issue was joined, among others, upon the question as to whether or not the property in question was a public alley and dedicated to the public use as such alley. On September 7, 1940, the cause was set for trial on November 7, 1940. On November 6, 1940, the petitioners moved that Consolidated Motors, Inc. be brought in as a party plaintiff to the second amended cross-complaint. On November 7, 1940, when the cause came on for trial, the petitioners filed a motion for change of trial judge. This motion was denied. Consolidated Motors, Inc. filed its consent to be, and on order of the trial court was, made a party plaintiff to the second amended cross-complaint adopting the Second Amended Cross-Complaint as its pleading.

The petitioners then moved that the trial setting be vacated and petitioners allowed time within which to answer the pleading of Consolidated Motors Inc. The motion was denied. Petitioners thereupon filed an affidavit of bias and prejudice against the trial judge, Arthur T. LaPrade. Judge LaPrade then continued the trial to November 12, 1940. On November 12, 1940, Judge LaPrade assigned the case to Judge Farley. Judge Farley called the case for trial and the respondents announced ready for trial. Judge Farley ordered the trial to proceed. The petitioners refused to participate and left the courtroom. Evidence was intro-

duced by the respondents. At the close of the evidence the trial court entered judgment for respondents. The judgment was affirmed by the Supreme Court of Arizona.

Numerous dilatory proceedings by petitioner in no way material to the questions here are not included in this statement.

Summary of Argument

The Petition should be denied because:

1. No federal question is presented by the Petition filed in this Court.
2. The determination of a federal question was not necessary for the decision below.

Argument

1.

The Petition should be denied because:

No federal question is presented by the Petition filed in this Court.

(a) Petitioners' first question.

The Petitioners' first question brings in issue the decision of the State Supreme Court on a purely procedural question. No federal question is presented and no question for review by this Court.

Thorington v. Montgomery, 147 U. S. 490, 13 S. Ct. 394, 37 L. Ed. 252.

Gibson v. Mississippi, 162 U. S. 565, 16 S. Ct. 904,
40 L. Ed. 1075

The respondent, Consolidated Motors, Inc, was brought in as a party plaintiff to the second amended cross-complaint *on motion of petitioners* and adopted the pleadings of the then cross-complainants. The cause was then at issue as to all other respondents and had been called for trial. No separate trial as to Consolidated Motors, Inc., was requested by petitioners.

Rule 21. *Rules of Civil Procedure for the Superior Courts of Arizona*. See Appendix.

If a federal question were presented it would be *only* as to the action on behalf of Consolidated Motors, Inc., and would in no way affect the judgment in favor of the remaining respondents.

(b) Petitioners' second question.

The Petitioners' second question brings in issue the decision of the State Supreme Court upon the interpretation to be given a state statute. No federal question is involved or was presented below. The petitioners in their Petition for Rehearing in the State Supreme Court admitted that the law provided for a hearing on the question of annexation and for notice of such hearing.

See page 207 of Record.

The decision of a state court upon a question of evidence or the construction of a state statute presents no federal question.

Bell Tel. Co. of Penn. v. Penn. Pub. U. Co., 309 U. S. 30, 60 S. Ct. 411, 84 L. Ed. 563.

State Tax Comm. v. Van Cott, 306 U. S. 511, 59 S. Ct. 305, 83 L. Ed. 950.

R. R. Comm. of Cal. v. Los Angeles Ry Corp., 280 U. S. 145, 50 S. Ct. 71, 74 L. Ed. 234.

The decision of the state court is upon a question of evidence—the sufficiency of the evidence to show dedication. The annexation proceeding is considered merely as one item of evidence to show or sustain the dedication of the property to the public use as an alley.

Enterprise Irr. Dist. v. Farmer's Mut. Canal Co., 243 U. S. 157, 37 S. Ct. 318, 61 L. Ed. 644.

The Petition should be denied because:

The determination of a federal question was not necessary for the decision below.

Petitioners' second question.

The decision of the State Supreme Court that dedication was shown by the City in 1912 taking possession of the property and constructing a sewer, by the public occupancy and use of the property, and by the failure of the petitioners to list for taxes or pay taxes on the property is sufficient for the determination of the cause without regard to the evidence as to the annexation. The non-federal ground is broad enough to sustain the judgment without consideration of a federal question. If a federal question were presented in con-

nection with the annexation proceedings, it was not necessary to the determination of the cause below.

Fox Film Corp. v. Muller, 296 U. S. 207, 56 S. Ct. 183, 80 L. Ed. 158.

McCoy v Shaw, 277 U. S. 302, 48 S. Ct. 519, 72 L. Ed. 891.

In any event, no question of due process or the taking of property without compensation could be presented in the state court or in this Court since the annexation statute provided for notice and an opportunity to be heard.

See petitioners' Petition for Rehearing, page 207 of Record.

Conclusion

It is respectfully submitted that the Petition fails to present grounds sufficient to authorize the issuance of a Writ of Certiorari and the Petition should be denied.

Respectfully submitted,

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